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SEC settlement comes at "low cost" to Nacchio

By **Andy Vuong**
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In March 2005, regulators filed a sweeping lawsuit against former Qwest chief executive Joe Nacchio and several other former executives, accusing them of engaging in a "massive financial fraud" and seeking as much as \$300 million in ill-gotten gains.

Last week, the Securities and Exchange Commission quietly agreed to settle the suit with the imprisoned Nacchio — without garnering any substantial penalty not already imposed through his 2007 criminal insider-trading conviction. The SEC had sought as much as \$216 million in forfeitures from Nacchio.

"It's some indication of the merits of their case," said Kevin Evans, an attorney for co-defendant and former Qwest accountant James Kozlowski. "If they thought this was such a great settlement

the same splashing press release that they issued when they filed this case."

Donald Hoerl, director of the SEC's regional office in Denver, declined to comment Tuesday.

Nacchio doesn't admit or deny guilt under the settlement, which requires court approval.

"It comes at a very low cost to Nacchio," said former SEC attorney Peter Henning, now a law professor at Wayne State University.

Nacchio agreed to forfeit \$44.6 million — an amount he had already been ordered to pay as part of his criminal conviction.

The deal states that the forfeiture from the criminal case would satisfy the SEC requirement. Nacchio also agreed not to appeal the \$19 million in fines stemming from the criminal case.

The settlement bars Nacchio from acting as an officer or director of any public company.

Nacchio's attorneys have filed plans to appeal his criminal sentence, which includes a prison term of five years and 10 months.

The \$44.6 million is slated to go toward a fund to compensate harmed Qwest investors. The \$19 million in fines will go toward a national victims' assistance fund, said Jeff Dorschner, a spokesman for the U.S. attorney in Colorado.

The SEC lawsuit, a culmination of a three-year

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investigation into Qwest, initially alleged that Nacchio and others helped the company book \$3 billion in false revenue from 1999 to 2001.

It has since been narrowed to focus on whether the defendants misled investors by lumping one-time sales with recurring revenue in Qwest's regulatory filings and not disclosing that they had done so. Recurring revenue better reflects a company's financial condition.

Twelve former Qwest executives and accountants were sued. Including Nacchio, eight have settled. The SEC said the Nacchio deal "will not affect the status of the case concerning the remaining defendants."

The remaining defendants are former Qwest president Afshin Mohebbi, former chief financial officer Robert Woodruff, and former accountants Frank Noyes and Kozlowski.

Henning said Nacchio's deal doesn't necessarily mean others will settle.

"As you get further down the chain, the greater the possibility that people are going to fight," Henning said.

The SEC has said settlement discussions with Kozlowski and Mohebbi broke down in February. Evans, Kozlowski's attorney, said there haven't been any settlement talks since. He said there is "zero" chance his client would admit wrongdoing.

"They never should've brought this case against

him to begin with," Evans said.

*Andy Vuong: 303-954-1209,
avuong@denverpost.com or twitter.
com/andyvuong*

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